IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.502 OF 1998

IN

ARBITRATION PETITION NO.227 OF 1997

...

Union of India ...Petitioner

v/s.

M/s.A.V.R. Enterprises ...Respondent

...

Mr.Suresh Kumar for the Petitioner.

None for the Respondent.

...

CORAM: D.K.DESHMUKH, J.

DATED: 25TH APRIL,2005

P.C.:

1. This Notice of Motion has been taken out for restoration of Arbitration Petition No.277 of 1997, which was dismissed for default on 3-12-1997. For restoation two reasons are given (i) "I say that when the arbitration petition was on board for final hearing, the Petitioners were not informed and hence they could not remain present on the date of hearing; and (ii) I have been informed that when on 3-12-1997 when the matter came up for hearing, the advocate appearing for the Petitioner was before the another bench, therefore, he could not remain present."

2. So far as first reason given is concerned, the Petitioner is Union of India and was represented by lawyer. When the matter was appearing on board, the name of the Union of India and lawyer was appearing on board, no separate intimation from the court was

necessary either to the Petitioner or to the lawyer.

3. So far as second reason is concerned, there is no affidavit filed by the lawyer. It is also not disclosed as to before which court the lawyer was busy. Even the name of the lawyer is not disclosed. Perusal of the order dated 3-12-1997 by which the petition was dismissed for default shows that one Mr.Ashokan advocate appeared before the court and at his instance the matter was adjorned to 26-11-1997. Though the matter was posted at the request of the advocate for the Petitioner on 26-11-1997, none for the Petitioner appeared on that date before the court. Therefore, the court adjourned the matter on 3-12-1997. On that date also none appeared for the Petitioner. Therefore, the court dismissed the petition. In the affidavit filed in support of the motion, there is no explanation why nobody appeared on 26-11-1997. In my opinion, affidavit in support of the motion has been filed in most casual manner and therefore, on the basis of such affidavit, petition cannot be restored. Motion disposed of.

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